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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

PAKISTAN: Rising violence against children

The Asian Legal Resource Centre (ALRC) would like to draw the UN Human Rights Council's attention to the rise in violence against children in Pakistan. The Realization of Children's Rights Index has ranked Pakistan as 159 out of 196 countries in the world in terms of child mortality, health and education facilities, and protection of child rights. Pakistan's collective morality was recently shaken to its core by the rape and murder of a seven year old girl Zainab, from Kasur District in Punjab Province. The brutal murder initiated a public debate on the sensitive issue of child sexual abuse, which is increasing in frequency, and not confined to any economic class. On 31 October 2017, a 16-year-old girl was paraded naked on the orders of a Jirga in DI Khan Area of Khyber Pakhtunkhwa province. She was made to suffer this 'punishment' because of her brother's relationship with a girl. In District Bhalwal, Punjab Province, a seven year old school girl was kidnapped and later her dead body was found in a field. In Sheikhupura District, an eight year old girl Baleeha, was kidnapped on December 23 and her dead body was found in a gunny bag on 4 January 2018. In Tasawarabad area of Sargodha District, a 15-year-old girl was found murdered.

Pakistan's worst child abuse scandal was unearthed in 2015, in Kasur District: more than 200 children were filmed while being sexually abused from 2009 onwards. The gang responsible for these pornographic videos is yet to be indicted; in fact, due to Pakistan's weak prosecution and investigation system, the culprits were given the benefit of the doubt, and the anti-terrorism court acquitted four suspects in August 2017. The delay in adopting policy measures to ensure the protection of children from all forms of abuse and exploitation has made matters worse.

Kasur District has become the hub of child sexual abuse in Pakistan, with over 700 cases of child sexual abuse being reported since 2015. In 2017, 129 child assault cases were reported from Kasur, yet hundreds more go unreported due to the shame and taboo associated with the issue, as well as victims' reluctance to take the matter to the police. According to official records, the crime against children including kidnapping, rape and murder has soared by 30% in 2017 compared to 2016. Moreover, statistics compiled by different NGOs show that 11 children are raped every day.

Pakistan's ineffective and inept justice system has failed to give even minor punishments to sex offenders. It is the responsibility of the Courts to levy correct punishments on those accused. Compromises in cases of the murder of underage children should not be allowed. Though medical evidence is against the accused in almost all cases, these are overlooked by the lower courts. The sickening trend of bribes is so rampant, that not even the aggrieved family of the murdered child is spared. Zainab's uncle for instance, was asked to pay Rs 10,000 to the police officer who found her dead body dumped in the garbage for successfully "locating" Zainab. The State's omission to act is criminal, and against the provisions of Article 35 of the Constitution. Despite the ratification of the UN Convention on the Rights of the Child, Pakistan has remained off-track on various Millennium Development Goal indicators, including those related to education, maternal health and infant mortality. Since the 18th Amendment of the Constitution, child protection has become the sole purview of the Provinces. The Provincial Governments have failed to enact Provincial Laws to ensure the protection of children however, exacerbating the state of children in the country.

Children in Pakistan are not only denied their basic right to a life of dignity, but are also denied their most fundamental right- the right to education. The official figure of out of school children paints a gloomy picture, calling out for emergency measures. According to data from the Ministry of Federal Education and Professional Training , as many as 44 percent of children between the ages of five and 16 are out of school. Of these, the majority are girls as the family deems girls' education a waste of money and a burden on the already precarious financial condition.

In terms of health, many Pakistani children do not live to see their fifth birthday. According to UNICEF, Pakistan tops the list in child mortality rate among South Asian countries. Pakistan loses 90, 000 children at the age of 5 to pneumonia annually.

Pakistan remains in the third spot with its prevalence of child and forced labour. Child labour continues unabated in the country, due to conflicting laws and lack of political will. Pakistan was ranked third on the Global Slavery Index 2016, for the second time in a row, with an estimated 2,134,900 people trapped in slavery. Meanwhile, although the International Labour Organization reports a decline throughout the world in the number of underage workers. Pakistan has no comprehensive child labour law, but the Constitution under articles 3, 11(3), 25(3) and 35 prohibits employment

of underage children, while stipulating that the rights of the child shall be protected by the state. Further, Article 37(e) stipulates that the state shall "make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex". Pakistan has ratified the UN Convention on the Rights of the Child in 1990, but has not enacted any enabling legislation since then, to make its provisions into domestic law. For this reason, the Convention cannot be directly applied in the courts.

In light of the above, the ALRC recommends that the government of Pakistan:

a) Strengthen its efforts to ensure that child rights are appropriately integrated, consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions, and in all policies, programmes and projects that are relevant to, and have an impact on, children.

b) Ensure that provincial governments establish a Child Safety Cell in every district. There is a dire need for a Provincial Action Plan to protect children from torture, abuse and violence. The provinces should also set up an effective awareness campaign for the protection of children, and introduce new legislation to protect children and other vulnerable groups.

c) Formulate policies and laws to eliminate child labour, and take cohesive and concrete steps to work towards ending poverty. The state must realize that child labor and poverty are inevitably bound together. If children continue to be used as a treatment for the social disease of poverty, the country will not be able to eradicate either poverty or child labor. The state must also ensure that while eliminating child labor from the export industry, it must also eliminate it from the informal sector, which, being invisible to public scrutiny, leaves the children more open to abuse and exploitation.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the International Bar Association, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

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Please recycle

The obligation to mobilise resources and human rights impact assessments of economic reform policies

Agenda Item 3: Interactive Debate with the United Nations Independent Expert on Foreign Debt

Mr President,

In support of the analysis and recommendations made by the Independent Expert on foreign debt in his report HRC/37/54, the International Bar Association's Human Rights Institute (IBAHRI) submits for your consideration the following findings and recommendations published in the IBAHRI report, *The Obligation to Mobilise Resources: Bridging Human Rights, Sustainable Development Goals, and Economic and Fiscal Policies* (December 2017).

1. The obligation to mobilise resources, related obligations and human rights impact assessment of resource-mobilisation options

Based on a wide compilation of the work of various treaty bodies and special procedures, the IBAHRI report develops the international legal framework supporting the state's obligation to assess the human rights impact of resource mobilisation policies. In addition to the non-retrogression obligation, the report highlights:

1.1 The obligation to mobilise resources for the realisation of human rights as a standalone obligation supporting evidence-based economic and fiscal policies

States have the obligation to ensure an adequate amount of resources are mobilised for human rights realisation in a way that is consistent with human rights principles. The process of setting priorities and managing trade-offs, as well as the substance of outcomes, must all comply with human rights-related transparency, participation and non-discrimination principles.[1]

Human rights monitoring bodies have advised states to undertake human rights impact assessments of resource mobilisation policies, including trade and investment agreements;[2] domestic tax policies and spill over effects of these on other countries; as well as the impact of austerity measures and other adjustment programmes.[3] Human rights impact assessments can: help identify the best choice among competing policy options for mobilising resources; identify both positive and negative human rights impacts of economic or fiscal measures; and help states prioritise those economic and social benefits that can make a sustainable contribution to the realisation of all human rights, over the short-term economic and/or political gains such measures can provide.[4]

The IBAHRI report found that human rights monitoring bodies do not generally address monetary policies and the way in which decisions adopted by central banks contribute to or hinder the availability of resources for the realisation of human rights. The lack of attention on monetary policies and central banks contrasts with the increasing public recognition that these policies affect the realisation of human rights, in particular economic, cultural and social rights.

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1 Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements.

2 In 2017, the CESCR made its views clear regarding trade and investment agreements and human rights impact assessments in a General Comment: CESCR General Comment 24, para 13.

3 See, eg, Concluding Observations United Kingdom E/C.12/GBR/CO/6 (2016) para 17; and Report of the Independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina (Mission to Greece) A/HRC/25/50/Add.1 (2014) para 92.

4 Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, para 6.1.

1.2 The obligation to accord a degree of human rights priority to resource allocation in support of reprioritising spending on social sectors

The *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* – widely accepted by human rights monitoring bodies – note that: 'In the use of the available resources due priority shall be given to the rights-realisation recognised in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements as well as the provision of essential services.' (para.28)

2. Giving priority to domestic over international resources in resource mobilisation

Through Sustainable Development Goal (SDG) 17.1, UN Member States committed to 'strengthen domestic resource mobilization, including through international support to developing countries to improve domestic capacity for tax and other revenue collection'.

Several human rights monitoring bodies have noted the advantages of mobilising domestic resources through taxation over external resource mobilisation.[5] 'The more a State can rely on domestic rather than external resource mobilization for its financing, the more it will be able to deploy sustainable development strategies and policies that are responsive to the needs of its people and accountable to them.'[6] Moreover, domestic resource mobilisation diminishes reliance on external aid, which has been considered 'unpredictable and unsustainable', 'inconsistent and insecure'.[7]

States should identify additional sources of fiscal space to increase resources for social and economic recovery. From an array of options, states should particularly consider widening the tax base, improving tax collection efficiency and reprioritising expenditures. 'Such reforms could help states achieve a more progressive, equitable and sustainable tax structure while complying with a human-rights framework'.[8]

3. The onus of a human rights impact assessment of economic reforms

In 2016, the CESCR issued a statement titled 'Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights'. This statement was triggered by the fact that the CESCR frequently faced situations where states parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) did not comply with their obligations owing to the adoption of fiscal consolidation programmes, 'including structural adjustment programmes and austerity programmes as a condition for obtaining loans' (para 1).

The statement notes that both lending and borrowing states seeking loans with certain conditionalities are required to carry out a human rights impact assessment prior to the loan's provision, to ensure such conditionalities do not disproportionately impact economic, social and cultural rights or lead to discrimination.

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5 See, eg, CESCR, Concluding Observations Kenya E/C.12/KEN/CO/2-5, para 18 and Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik (2010) UN Doc A/HRC/13/20/Add. 3.

6 Report of the Special Rapporteur on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona (2014) UN Doc A/HRC/26/28, para 52.

7 Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (2012) UN Doc A/67/302.

8 Report of the Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, (on human rights-based approach to recovery) (2011) UN Doc A/HRC/17/34, para 80.

The statement also reiterates the obligation of international financial institutions, such as the International Monetary Fund (IMF) and the World Bank, and states as international organisation members to comply with human rights.

4. Assessing the impact of cumulative economic and fiscal measures

The IBAHRI report supports the cumulative impact assessment of economic and fiscal measures proposed by the Independent Expert. Based on the work of treaty bodies and special procedures, rather than simply assessing the potential human rights impact of specific resource mobilisation policies, states should consider whether these policies are the best options for countries seeking to mobilise maximum available resources for human rights.

5. IBAHRI's recommendations for the development of Guidelines on the human rights impact assessment of economic reforms

In application of the states' obligation to mobilise resources for the realisation of human rights, the obligation to accord a degree of human rights priority to resource allocation and the non-retrogression obligation, the IBAHRI recommends that the guidelines on the human rights impact assessment of economic reforms:

- address the state's obligation to identify the root causes of fiscal and economic crises, including the role of monetary policies, and ensure a participatory process for the development of evidence-based economic and fiscal policies;
- build on the broader state's obligation to assess the human rights impact of resource mobilisation policies;
- address the recommendation made to states to give priority to domestic over international resources in resource mobilisation, also in light of SDG 17.1;
- address the shared burden of lending and borrowing states in undertaking a human rights impact assessment; and
- address human rights impact assessments as an important accountability tool. By explicitly clarifying what can be expected from a particular resource mobilisation policy, errors, omissions and actors involved can be more clearly identified if the expected resources are not mobilised or when human rights are affected.

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Organizational and procedural matters

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The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

The promotion and protection of human rights in light of the Universal Periodic Review mechanism: challenges and opportunities

High-level panel with United Nations agencies on human rights mainstreaming

Mr President,

On the occasion of the high-level panel with United Nations agencies, the International Bar Association's Human Rights Institute (IBAHRI) submits for your consideration the key findings of its three reports on the impact of the Universal Periodic Review (UPR) on enhancing human rights in the administration of justice and protection of legal and judicial professionals (2016);[1] human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons (2016);[2] and human rights in juvenile justice systems (upcoming, 2018).[3]

1. Key findings

1.1 The role of the Universal Periodic Review in advancing human rights in the administration of justice (2016)

The IBAHRI found that international recommendations made at the UPR on the administration of justice still need to be lifted to the level of protection spelled out in international standards, especially the UN Basic Principles on the Role of Lawyers, the UN Basic Principles on the Independence of the Judiciary and the UN Guidelines on the Role of Prosecutors. These standards and content have hardly been addressed at the UPR.

More specifically:

- UPR recommendations still insufficiently address the role of judges, lawyers and prosecutors, or the threats they face, as extensively documented by the Special Rapporteur on the independence of judges and lawyers. Significantly, these recommendations often make no reference to relevant UN standards.
- Recommendations relating to the independence of judges are often too vague to be an effective response to the shortcomings of any given jurisdiction. Serious issues in the appointment and removal of judges are mostly ignored.
- The independence of lawyers was considered in fewer than 100 of the 38,000 UPR recommendations spanning from 2008 to 2016.
- Prosecutorial independence is addressed in less than ten per cent of the recommendations calling upon states to effectively investigate or prosecute rights violations.
- Guarantees for legal professionals' rights to freedom of expression, assembly and association are barely addressed. This fails to reflect the key role that self-governing organisations of legal professionals should play in upholding human rights and the rule of law, the independence of the legal profession and law reform processes.
- The UPR recommendations have barely mentioned until now the specific status and need for protection of legal professionals.

1.2 Sexual orientation, gender identity and expression, and sex characteristics at the Universal Periodic Review (2016)

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1 IBAHRI, *The role of the Universal Periodic Review in advancing human rights in the administration of justice* (IBA, 2016).
2 IBAHRI, *Sexual orientation, gender identity and expression, and sex characteristics at the Universal Periodic Review* (IBA, 2016).
3 IBAHRI, *The role of the Universal Periodic Review in enhancing human rights in juvenile justice* (IBA, 2018).

The IBAHRI report found that:

- More and more sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) and LGBTI recommendations have been made over the 22 UPR sessions considered in the IBAHRI report. If SOGIESC issues are not in the top list of issues addressed, a great percentage of countries putting the LGBTI community in a critical situation have been addressed. More than half of the recommendations made between 2008 and 2015 are close to qualifying as specific, measurable, actionable, relevant and time-bound recommendations.
- Recommended calls to action mostly lie in law reform and, to a lesser extent, awareness-raising and training measures. Great emphasis has been placed on the principle of non-discrimination, the right to security, freedom from arbitrary detention and the right to privacy, through the decriminalisation of consensual same-sex sexual relationships. Most remarkably, the recommendations related to the right to found a family, addressing both partnerships and the right to adopt, constitute the fourth main category of rights addressed. The UPR constitutes in that respect the most progressive arena for the protection of the LGBTI community at the international level.

At the same time, the main shortcomings and challenges ahead for the UPR to gain impact on the ground were found to be the following:

- The limited number of recommendations addressing the death penalty based on sexual orientation and quasi-absence of recommendations addressing torture and degrading and inhuman treatment committed against LGBTI persons remains among the most striking gaps. So is the extremely low level of acceptance of decriminalisation of consensual same-sex relationships, at less than six per cent, as well as the absence of reference to children and youth in the SOGIESC recommendations.
- Besides, a number of issues remain to be specifically addressed at the UPR, like gender identity, expression and sex characteristics.

1.3 The role of the Universal Periodic Review in enhancing human rights in juvenile justice (2018)

The upcoming IBAHRI report finds that, over its first two cycles:

- The UPR has consolidated some of the major principles of the UN Convention on the Rights of the Child (CRC) and, some principles of the Beijing and Havana Rules. This is the case for the establishment of a juvenile justice system and a minimum age of criminal responsibility; the principle of deprivation of liberty as a last resort and for the shortest time possible; the principle of separation of children from adults in detention; and the non-imposition of the death penalty for crimes committed by persons under the age of 18.
- The UPR has gone beyond existing international legal frameworks and drew additional attention to a form of inhumane sentencing, on which international condemnation is often limited, life imprisonment with or without parole.
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The main shortcomings and challenges ahead for the UPR to gain impact on the ground were found to be the following:

- The UPR has fallen short of international standards insofar as it has, to date, hardly addressed the prevention aspect and the diversion process placed at the core of juvenile justice systems in the UNCRC. It also falls short of the guarantees of a fair trial and procedural rights to which children are entitled when deprived of their liberty. After those calling for the abolition of inhuman sentencing, recommendations relating to fair trial rights were the least accepted.
- Within this, the fundamental role of lawyers in representing and defending children in judicial processes has been particularly overlooked. Children are specifically dependent on legal assistance in order to understand the juvenile justice process and be represented so that their rights are respected.

2. IBAHRI's recommendations for improvement of the UPR process

The IBAHRI calls upon the Human Rights Council (HRC) as well as states to ensure that, in the third cycle of the UPR:

- The role of judges, lawyers and prosecutors receives the heightened attention that it is due, as recognised by the UN Basic Principles on the Independence of the Judiciary, the UN Basic Principles on the Role of Lawyers and the UN Guidelines on the Role of Prosecutors.
- UPR recommendations build upon the current international human rights framework and borrow the agreed international human rights language.
- The process aims at sharing the best practice among states and other stakeholders, as per HRC Resolution 5/1 (2007), para 4(d). Only a few states have echoed the recommendations and good practices identified by the Special Rapporteurs in the administration of justice. Positive progress, for instance, with respect to the protection of the rights of LGBTI persons and diversion measures for children, is currently hardly accessible.
- Primary stakeholders are involved insofar as their engagement constitutes the best guarantee of impact on the ground. For instance, the presence of LGBTI groups in this process has been significant, including local LGBTI groups who can take ownership of the recommendations and follow-up. Conversely, the involvement of legal and judicial professionals and children's groups is still lacking.
- A monitoring system of the UPR recommendations, consistent with a holistic monitoring of the country's human rights obligations and Sustainable Development Goals on the ground. Most notably, the absence of implementation or reporting guidelines in the area of the administration of justice is a peculiar problem that goes beyond the UPR. Notwithstanding the UN Rule of Law Indicators, there is currently no UN monitoring system measuring adherence to international standards on the independence of justice. The IBAHRI therefore encourages states under review to use the UN Rule of Law Indicators and set up a monitoring system based on the UN Basic Principles and Guidelines to monitor progress in realising access to justice for all, as targeted by Sustainable Development Goal 16.